BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION APPROVING AND AUTHORIZING CHAIRMAN TO SIGN THE INTERLOCAL COOPERATION ACT AGREEMENT BETWEEN SARPY COUNTY AND SANITARY AND IMPROVEMENT DISTRICT 302 (Prairie Hills) FOR ROAD IMPROVEMENTS TO HWY 370 AND 114TH STREET

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104, the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. § 23-103, the powers of the County as a body are exercised by the County Board; and,

WHEREAS, general supervision and control of the public roads of each county is vested in the County Board by virtue of Neb. Rev. Stat. §39-1402; and,

WHEREAS, pursuant to Neb. Rev. Stat. §13-801, et seq., an Interlocal Cooperation Act Agreement has been proposed between the Sanitary and Improvement District 302 and Sarpy County for allocation of the cost of certain road improvements to portions of Hwy 370 and 114th Street as further outlined in said Agreement; and,

WHEREAS, it is in the best interests of the residents of Sarpy County to participate in said Interlocal Cooperation Agreement, a copy of which is attached hereto and incorporated by reference.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS that this Board hereby approves and adopts the attached Interlocal Cooperation Agreement.

BE IT FURTHER RESOLVED that the Chair and Clerk are hereby authorized to execute said Agreement on behalf of Sarpy County, Nebraska and they in addition to the County Public Works Director (or his designee) are authorized to take such other actions as may be necessary under the terms of said Agreement.

The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the __ day of March, 2016.

Sarpy County Board Chairman

[Signature]

County Clerk

[Signature]
INTERLOCAL COOPERATION AGREEMENT
(Prairie Hills - 114th Street Improvements)

This Interlocal Cooperation Agreement is made and entered into as of the dates indicated at the signatures below by and between the COUNTY OF SARPY, NEBRASKA (hereinafter referred to as "Sarpy County"), and SANITARY AND IMPROVEMENT DISTRICT NO. 302 OF SARPY COUNTY, NEBRASKA (hereinafter referred to as "SID 302"). Sarpy County and SID 302 are sometimes referred to individually as a "Party" and collectively as the "Parties".

PRELIMINARY STATEMENT

Sarpy County is a duly existing body, corporate and politic in accordance with and by virtue of the laws of the State of Nebraska.

SID 302 is a duly existing body corporate and politic in accordance with and under the laws of the State of Nebraska as more particularly set forth in Article 7 of Chapter 31 of the Revised Statutes of Nebraska, 1943, and any applicable amendments thereto, and the Decree of the District Court of Sarpy County, Nebraska.

SID 302 abuts 114th Street and is presently undertaking the development of the real property on the west side of 114th Street legally described as Prairie Hills, Lots 1 thru 118 and Outlots A thru F, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska (the "Subdivision").

The Subdivision is within the extraterritorial zoning jurisdiction of the City of Papillion and Sarpy County has the jurisdiction and control of 114th Street. All Parties to this Agreement are desirous of making certain improvements to 114th Street.

In order to promote the health, safety, and welfare of the residents of all of the Parties to this Agreement and pursuant to the authority granted to the parties pursuant to the Interlocal Cooperation Act, Section 13-801, et. seq., Sarpy County and SID 302 are authorized to enter into this Agreement with each other so as to make the most efficient use of their powers by enabling them to cooperate on a basis of mutual advantage and thereby provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of such political subdivisions.

It is in the best interests and would be mutually advantageous to Sarpy County and SID 302 to improve at this time, pursuant to this Agreement, 114th Street from Highway 370 to the southerly boundary line of Prairie Hill subdivision and a right turn lane on Highway 370 as shown on the improvement plan attached hereto as Exhibit A-1 and A-2 and incorporated herein by this reference (the "Improvement Plan"). Such
improvements to 114th Street and Highway 370 may include, without limitation, acquisition of additional right of way, a change of grade, P.C. concrete pavement, relocation of utilities, installation of storm sewers and other drainage facilities, and related improvements (hereinafter referred to as the "Improvements").

The estimated construction costs and the estimated engineering and construction management costs are shown on Exhibit B attached hereto and incorporated herein by this reference (the "Estimated Construction Costs").

NOW, THEREFORE, in consideration of, and based on the foregoing Preliminary Statement and the mutual promises and agreements set forth below, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. **No Administrative Entity.** There shall be no separate legal or administrative entity created to administer this Agreement and, therefore, no separate budget established for such an entity.

2. **Plans and Design.** Sarpy County will contract with an engineering firm registered in the State of Nebraska (the "Engineering Contractor"), for the preparation of plans and specifications for the construction of the Improvements to be constructed pursuant to the Improvement Plan with Sarpy County being the lead agency. As the Lead Agency, Sarpy County shall have control and responsibility for the construction of the Improvements. The final plans and specifications for the Improvements set forth in the Improvement Plan may be reviewed by SID 302. Construction administration, construction management, staking and the public bidding of the Improvements set forth in the Improvement Plan shall be performed by Sarpy County.

3. **Construction.** Subject to the conditions and provisions hereinafter specified, Sarpy County agrees to cause the Improvements to be constructed in accordance with the final plans and specifications. During the course of the construction of the Improvements set forth in the Improvement Plan, SID 302 may at any time cause inspection of the work to insure compliance with the final plans and specifications. The Parties hereto agree that Sarpy County will own, operate and, at its cost, maintain all of the Improvements constructed or installed within the right-of-way upon completion until such time as these obligations are passed to another entity by operation of law.

All construction work occasioned by this Agreement shall be performed by the contractors furnishing the lowest and best bid as determined pursuant to formal bidding requirements as provided by law and as thereafter approved by the Parties.

All contractors performing work on the Improvements pursuant to this
Agreement shall furnish a performance bond to the Lead Agency, which shall remain in full force and effect and until acceptance of the construction and which, in part, shall provide for the good and faithful performance of the construction contract, plans and specifications by contractor, for compliance by contractor with all applicable laws, for payment of material, labor and rentals, and for the payment of the unemployment payment to the Department of Labor of the State of Nebraska as provided by law.

All contracts with third parties pertaining to the construction of Improvements shall, in part, provide full and faithful adherence to the plans and specifications for the work, partial payments during construction based upon work completed and certified by the Lead Agency's engineers for final payment upon completion and certification by the Parties in accordance with this Agreement.

In the event the lowest responsible bid received exceeds the total estimated cost for such work as detailed on Exhibit B attached hereto by ten (10%) percent or more, the County shall promptly provide or cause to be provided notice thereof to SID 302, and the Parties hereto shall meet to determine whether it would be in the Parties' best interests to rebid such work or award the contract as bid.

After the approval of the final plans and specifications, the County shall not amend such plans or specifications in any material respect without the written approval of SID 302, which approval shall not be unreasonably withheld, conditioned or delayed, and shall be deemed to have been given unless SID 302 objects to such amendment in writing within ten (10) business days after presentation of such amendments by the County.

4. **Allocation and Payment of Construction Costs.** The estimated costs for the Improvements set forth in the Improvement Plan are as shown on the attached Exhibit B. Payment for the Actual Total Costs of the Improvements shall be made by each of the Parties hereto in accordance with the terms of this Agreement. Parties will allocate appropriate funds in accordance with the estimates and pro-rata shares. Actual Total Costs of the Improvements shall be the complete final cost of construction of the Improvements and shall include design, engineering, any environmental studies or documentation, testing expenses, construction administration, and related fees and expenses. The Actual Total Costs of the Improvements shall not include any costs for attorney's fees, publication costs, accounting, financing or acquisition of financing incurred by any Party. The Actual Total Costs of the Improvements shall be split between the Parties as follows:

   a. **Highway 370 Right Turn Lane Improvements:** SID 302 shall pay, as their pro-rata share, 1/3 of the Actual Total Cost of the Improvements to
Highway 370. (SID Contribution – Hwy 370) Sarpy County shall pay 2/3 of the Actual Total Cost of the Improvements to Highway 370 (County Contribution – Hwy 370). The 2/3 pro-rata share shall be paid for initially by Sarpy County and Sarpy County may seek reimbursement of said 2/3 share from other land developers in the area. Any reimbursement shall be payable solely to Sarpy County. Once the Highway 370 Right Turn Lane Improvements have been completed and the Actual Total Cost of said Highway 370 Right Turn Lane Improvements is known, Sarpy County will bill SID 302 for its respective share of the Actual Total Cost of the Highway 370 Right Turn Lane Improvements. SID 302 shall reimburse Sarpy County for the SID Contribution – Hwy 370 no later than three years following completion of construction of said Highway 370 Right Turn Lane Improvements.

b. 114th Street Improvements: SID 302 shall pay, as their pro-rata share, ½ of the Actual Total Cost of the Improvements to 114th Street. (SID Contribution – 114th ST) The other ½ of the Actual Total Cost of the Improvements to 114th Street shall initially be paid for by Sarpy County and Sarpy County may seek reimbursement of the ½ share from other land developers in the area. Any reimbursement shall be payable solely to Sarpy County. Sarpy County may bill SID 302 periodically for the 114th Street Improvements as construction costs are incurred. SID 302 shall pay within thirty (30) days after receipt of such statement. Once the 114th Street Improvements have been completed and the Actual Total Cost of said 114th Street Improvements is known, Sarpy County will bill SID 302 for its respective share of the Actual Total Cost of 114th Street Improvements, which SID 302 shall pay within thirty (30) days after receipt of such statement.

c. Timing of Reimbursement of Remainder of Improvement Costs. Notwithstanding any provision herein to the contrary, the reimbursement by SID 302 under Subsections 4a. and 4b., above, shall be in the maximum amount of $288,536 until such time as either (i) the total valuation of SID 302 exceeds the sum of $37,200,000 (which is the projected valuation of Phase 1 on full build-out and one-half of the projected valuation of Phase 2 on full build-out of the Development), or (ii) five years after the completion of the Highway 370 and 114th Street Improvements as certified by the County Engineer, at which time SID 302 shall reimburse the County for the remainder of SID 302's share of the Actual Total Cost of the Improvements to Highway 370 and the Actual Total Cost of the 114th Street Improvements.

5. Land Acquisition, Utility Relocation and Timing of Work. SID NO. 302 agrees to dedicate and/or to cause the developer of SID NO. 302 to dedicate to the public, at no expense to Sarpy County, any right-of-way or easements located within or adjacent to SID NO. 302 that are required for the grading
and construction of the right turn lane on Highway 370 and the west side of 114th Street improvements. Sarpy County will be responsible for the coordination of any utility relocation that may be necessary to perform the grading and construction in accordance with the Improvement Plan. It is the mutual desire and intention of the Parties that the Improvements set forth in the Improvement Plan shall be commenced as soon as practicable after Final Plat for the Subdivision has been recorded in the Office of the Sarpy County Register of Deeds. Accordingly, the Parties hereby agree to cooperate with each other and make reasonable, good faith efforts to perform their obligations hereunder in a timely manner.

6. **Records.** The Engineering Contractor, as agent for Sarpy County, shall maintain records of all Construction Costs incurred by Sarpy County in connection with the Improvements, and Sarpy County shall have the right to audit and review such records at any time to assure that such records are accurate.

7. **Duration.** This Agreement shall continue until such time as the obligations to be performed by the Parties pursuant to the Improvement Plan and this Agreement have been completed, unless this Agreement is terminated sooner by the written agreement of all Parties hereto.

8. **Appointment of Administrators.** Sarpy County shall be the lead agency for this Agreement. The Sarpy County Engineer shall administer this Agreement on behalf of Sarpy County, Olsson Associates shall administer this Agreement on behalf of SID 302.

9. **Nondiscrimination Clause.** In accordance with the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. 48-1122, each party agrees that it nor any of its subcontractors or agents shall discriminate against any employee, or applicant for employment to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions, or privileges of employment because of the race, color, religion, sex, disability, or national origin of the employee or applicant.

10. **Drug Free Policy.** Each Party hereto represents and warrants to the other that it has established and maintains a drug free workplace policy.

11. **Choice of Law.** This Agreement shall be governed in all respects by the laws of the State of Nebraska and the venue for any litigation with respect hereto shall be in the courts of Sarpy County, Nebraska.

12. **Entire Agreement.** This instrument contains the entire agreement of the parties and shall be binding upon the successors and assigns of the
respective parties. No amendments, deletions or additions shall be made to this Agreement except in writing signed by all parties. Nebraska law shall govern the terms and performances under this Agreement.

13. **Severability.** In the event any portion of this Agreement may be held invalid or unenforceable for any reason, it is agreed that any invalidity or unenforceability shall not affect the remainder of this Agreement and the remaining provisions shall remain in full force and effect, and any court of competent jurisdiction may so modify any objectionable provision of this Agreement so as to render it valid and enforceable.

14. **New Employee Work Eligibility Status.** The Parties agree to comply with the residency verification requirements of Neb. Rev. Stat. §4-108 through §4-114. The parties are required and hereby agree to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

15. **Conflict of Interest.** The Parties warrant to each other that they have not employed nor retained any company or person, other than a bona fide employee working solely for the Parties to this Agreement to solicit or secure this contract, and that they have not paid or agreed to pay any company or person other than a bona fide employee working solely for the parties, any fee, commissions, percentage, brokerage fees, gifts or other consideration, contingent upon or resulting from the award or making of this contract.

16. **Representations.** Each Party hereto represents and warrants to the other that (i) it has all necessary right, power and authority to enter into this Agreement, and (ii) the execution and delivery of this Agreement and the performance and observance of all obligations and conditions to be performed or observed by such party have been duly authorized by all necessary action on behalf of such Party.

17. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one Agreement. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon.
provided such signature page is attached to any other counterpart identical thereto.

IN WITNESS WHEREOF, we, the contracting Parties, by our respective duly authorized agents, hereby enter into this Agreement, effective on the day and year affixed hereon. Executed on the dates indicated with the signatures below.

[Signatures on Following Pages]
Executed by the County of Sarpy, Nebraska, this 1st day of March, 2016.

COUNTY SARPY, NEBRASKA

By: [Signature]
Chairman

ATTEST:

[Signature]
County Clerk

APPROVED AS TO FORM:

By: [Signature]
Deputy County Attorney
Executed by Sanitary and Improvement District No. 302 of Sarpy County, Nebraska, this 24th day of February, 2016.

SANITARY AND IMPROVEMENT DISTRICT NO. 302 OF SARPY COUNTY, NEBRASKA,

By: [Signature]
Chairman

ATTEST:
[Signature]
Clerk
NOTE: FINAL DESIGN TO BE COMPLETED BY SARPY COUNTY'S CONSULTANT AND MAY DIFFER SLIGHTLY FROM THE INFORMATION SHOWN IN THIS EXHIBIT.
114TH STREET TYPICAL
TWO-LANE SECTION

114TH STREET TYPICAL
THREE-LANE SECTION

WEST LANE AND CENTER LANE TO
BE CONSTRUCTED AND STRIPED
AS TWO-LANE ROADWAY WITH
DEVELOPMENT OF SUBDIVISION
## EXHIBIT B
**OPINION OF PROBABLE COST**
Interlocal Cooperation Agreement

**Prairie Hills - 114th Street and HWY 370 Turn Lane Improvements**
2/19/2016

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SUBTOTAL ESTIMATED CONSTRUCTION COST $417,200.00

ESTIMATED SOFT COSTS (ENGINEERING, TESTING) 21% $87,612.00

**TOTAL ESTIMATED PROJECT COST** $504,812.00

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SUBTOTAL ESTIMATED CONSTRUCTION COST $239,800.00

ESTIMATED SOFT COSTS (ENGINEERING, TESTING) 21% $50,358.00

**TOTAL ESTIMATED PROJECT COST** $290,158.00

114th and HWY 370 Turn Lane Improvements adjacent to SID 302 (Prairie Hills) $794,970.00

* Cost Estimates were provided by Lamp Renearson Associates on 12/15/15 who is Sarpy County's Consultant for both 114th Street as well as the Highway 370 Turn Lane. The cost estimates provided included items that were adjacent to the frontage of SID 302 (Prairie Hills). The cost estimates also include a 10% contingency for each project.